

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LESTER HAYES, et al.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
NICHOLAS MULLER, et al.,	:	No. 96-1628
Defendants	:	

M E M O R A N D U M

Padova, J.

June , 1997

Plaintiff, Lester Hayes ("Hayes"),¹ brought this civil rights action pro se pursuant to 42 U.S.C.A. § 1983 (West 1994 & 1997 Supp.) against the Pennsylvania Board of Probation and Parole ("PBPP"), Parole Agent David L. Smith, and Deputy District Director Ronald L. Zappan.² Thereafter, Hayes filed a Motion for Appointment of Counsel, and it was granted. Hayes alleges that Defendants violated his Fourth Amendment rights by illegal searches of his business. He further alleges that they violated his Fourteenth Amendment rights by intentionally driving him out of business, thereby depriving him of property without due

¹ Lester Hayes was purportedly joined in this suit by his wife, Sandra D. Hayes, but Sandra Hayes testified that she had not signed any of the documents bearing her name, nor had she given her husband permission to sign for her. (Defs.' Mot. Sanct. Ex. G at 87-91.) Hayes stated that he had no intention of committing fraud, but only wished to act as husband and agent on behalf of his wife. (Pl.'s Mem. in Resp. Ex. G, Aff. of Lester Hayes.) The claims of Sandra D. Hayes were voluntarily dismissed, and this Memorandum will refer to Lester Hayes as the sole Plaintiff.

² Hayes voluntarily dismissed his claims against another defendant, PBPP chairman Nicholas Muller.

process of law.³ In addition, Hayes claims that Smith's actions were racially motivated. Defendants have filed a Motion for Summary Judgment. For reasons that follow, the Motion will be granted.

I. BACKGROUND

Lester Hayes is a barber by trade. He was paroled in October, 1990, and several years later, in April, 1993, he opened Rashid's Hair Gallery, and became active in the local business community.⁴ (Defs.' Mot. Summ. J. Ex. III, Lester Hayes dep. ("Hayes Dep.") at 24, 47; Pl.'s Resp. Ex. A.) As a condition of his parole he signed a PBPP agreement, under which he agreed to report to his parole officer as instructed and to refrain from using or possessing illegal drugs. (Defs.' Mot. Summ. J. Ex. V-8.) He also agreed to allow a parole officer to search his person, property and residence without a warrant. (Id.) By late April, 1995, Hayes was in violation of parole for having failed to report for urinalysis tests on several occasions. (Defs.' Mot. Summ. J. Ex. V , Agt. David L. Smith Dep. ("Agt. Smith Dep.") at 65, Ex. V-9.) On July 3, 1995, Parole Supervisor John Murray directed Hayes' new parole agent, David L. Smith, to try

³ Hayes also claimed violations of the Fifth, Sixth, and Eighth amendments, along with state law claims of tortious interference with contracts, slander and conspiracy. He voluntarily dismissed those claims. Hayes' Complaint and Supplemental and/or Amended Complaint were filed without benefit of counsel.

⁴ Hayes was actually reparaoled. He had previously been released on parole and his parole had been revoked. (Defs.' Mot. Summ. J. Ex. III, Lester Hayes' Dep. ("Hayes Dep.") at 24.)

to locate Hayes, to verify his residence and employment, and to ensure that he would report for drug testing on July 5, 1995.

(Agt. Smith Dep. at 75-76.)

Various employees at Rashid's Hair Gallery stated that on July 3 and July 5, 1995, Agent Smith entered Hayes' place of business, Rashid's Hair Gallery, identified himself as a parole agent, and asked the employees questions.⁵ On the first occasion, Smith asked barber James Johnson who owned the business. Johnson replied that "the owner was not in." (Pl.'s Memo. in Opp. Ex. C, Aff. of James Johnson ("Johnson Aff.") at ¶ 4.) Smith asked a second barber, Matthew Smith, what was going on at the business. Matthew Smith refused to answer and walked away. (Pl.'s Memo. in Opp. Ex. B, Aff. Matthew Smith ("M. Smith Aff.") at ¶ 4.) On either July 3 or July 5, Agent Smith asked another employee, Nicole Freeman, whether the owner was in, and she replied that Mr. Rashid was not there. Agent Smith then asked Freeman for her name, but she declined to give it. (Pl.'s Memo. in Opp. Ex. D, Aff. Nicole Freeman ("Freeman Aff.") at ¶ 5.) All three employees found Agent Smith's behavior toward them rude and aggressive. All three agreed that Smith opened the

⁵ Employee Matthew Smith related the events of July 3, 1995. Employee James Johnson related the events of July 3, July 5, and another occasion, for which no date was given, on which Smith questioned Sandra Hayes. Nicole Freeman related the events of July 3 or July 5, she wasn't sure which day, and another occasion, on which Agent Smith spoke with Sandra Hayes. (Pl.'s Memo. in Opp. Ex. B, Aff. of Matthew Smith ("M. Smith Aff.") at ¶¶ 4-5; Ex. C, Aff. of James Johnson ("Johnson Aff.") at ¶¶ 3-8; and Ex. D, Aff. of Nicole Freeman ("Freeman Aff.") at ¶ 4.

closed door of a back room with a "No Trespassing/Personnel Only" sign on it without knocking and searched the room. (M. Smith Aff. at ¶ 5; Johnson Aff. at ¶ 6; Freeman Aff. at ¶ 5.) Matthew Smith said that he saw Agent Smith "go digging around back there like he owned the place." (M. Smith Aff. at ¶ 5.) James Johnson stated that, on both July 3 and July 5, Agent Smith "began to search the premises as though he was looking for something." (Johnson Aff. at ¶ 6, 8.) Nicole Freeman was unsure whether the date was July 3 or July 5, but she stated that Agent Smith "began searching around" in the back room. (Freeman Aff. at ¶ 5.) Two of the employees stated that Agent Smith subsequently returned to Rashid's Hair Gallery on at least one other occasion and questioned Hayes' wife, Sandra Hayes. The same two stated that Agent Smith seemed to be maintaining a surveillance of the barber shop. (Johnson Aff. at ¶ 10; Freeman Aff. at ¶ 7.) All three employees stated that, as a result of Smith's activities, Rashid's customers and employees were intimidated. (M. Smith Aff. at ¶ 5; Johnson Aff. at ¶ 11; Freeman Aff. at ¶ 8.)

Agent Smith testified that, on July 3, he and another agent went into the back room, thinking Hayes might be there. (Agt. Smith Dep. at 93.) He further testified that the door to the back room at Rashid's Hair Gallery was open, and through it he observed a homemade bar, a person sitting behind the bar, a person trying to cash a social security check at the bar, and two video poker machines. He claimed he saw several boxes and empty bottles of cheap liquor outside the back door. Smith testified

that he suspected the rear of the barber shop was being used as a "speakeasy." When he found that Lester Hayes was not in the room, he and the other agent left through the back door. (Agt. Smith Dep. at 83-93, 111, 114-116.)

Hayes' three employees who observed Agent Smith's entry into the back room on July 3 and July 5 did not state what was in the back room on those days that Agent Smith might have seen. (M. Smith, Johnson, & Freeman Affs.) Hayes himself testified generally as to the back room's equipment and use. He stated that the back room was where female employees undressed. (Hayes Dep. at 185.) He further testified that the room contained, for purposes of amusement, two legal poker machines of a kind commonly found in restaurants, beauty salons, grocery stores and check cashing agencies. (Hayes Dep. at 182-83.) He described the other contents of the back room as "[c]osmetic supplies, building material, a refrigerator, microwave, chairs situated around, and renovation going on." (Id. at 193.) When asked if there was any type of bar, he responded that there was "something like a desk that we were trying to build and have it formicaed." (Id.) When asked if someone might confuse it for a bar, he responded, "No. I -- okay. I'll leave that alone." (Id. at 194.) Agent Smith's uncontested testimony was that he observed what seemed to be a bar, with a man behind it, someone trying to cash a check at the bar, and empty liquor bottles behind the store. Defendants contend those observations provided Smith with

reasonable grounds for thinking the back of the store might have been used as a speakeasy and justified his searching further.

On July 3, 1995, after leaving Rashid's Hair Gallery, Agent Smith, accompanied by Agent Boyd, went to the residence of Mr. Samuel Wilson, where Hayes was staying. (Agt. Smith Dep. at 98-101.) Hayes was reluctant or unable to give a urine sample and admitted that he had recently smoked marijuana at a wedding. (Id. at 74, 102.) The agents instructed Hayes to come to the PBPP office on July 5, 1995, at 10:00 a.m. (Id. at 103.) When Hayes failed to appear at the office at the appointed time, Smith and two other agents went to look for him. (Id. at 121-26.) At Rashid's Hair Gallery, the agents searched the premises, looking for Hayes and for evidence of a speakeasy. They then returned to the office and found Hayes waiting there. (Agt. Smith Dep. at 121, 141-42.) Deputy Zappan issued a warrant for Hayes' arrest, charging him with technical parole violations: use of drugs; failure to follow written instructions; and reporting violations. Hayes was taken into custody, given a hearing, and sent to the State Correctional Institution at Graterford. (Id. at 121, 144-46, 191.)

One of Hayes' employees stated that after Hayes was recommitted, Agent Smith continued to watch Rashid's Hair Gallery "on other occasions, from July, 1995 to November, 1995," eventually making everyone so uncomfortable that customers ceased their patronage and employees left. (Johnson Aff. at ¶ 9; see

also Freeman Aff. at ¶ 8.) Rashid's Hair Gallery closed in November, 1995. (Hayes Dep. at 70.)

Agent Smith testified that he went to Rashid's Hair Gallery on another occasion. He testified that, on September 20, 1995, after Hayes was in custody, the Smith received a call from a woman who stated that her former boyfriend, Mark Andrews, was harassing her and that there was a parole warrant for him. The woman told the him that Mark Andrews was an employee at Rashid's Hair Gallery. (Agt. Smith Dep. at 165-167.) Smith, along with members of the Philadelphia Police Department, went to the neighborhood of Rashid's Hair Gallery to track down Andrews. (Id. at 166-73.) The team spotted Andrews and chased him, unsuccessfully. (Id.) Smith then went into Rashid's Hair Gallery and explained to Mrs. Hayes what he had been doing outside the business and he asked the barber on duty to identify a photograph of Andrews. (Id. at 175-77.) Sandra Hayes testified that Smith questioned her aggressively, and that after she stated him she had no knowledge of the person Smith wanted, he started asking about the back room. She took him there and showed him there was nothing in it to interest him. (Defs.' Mot. Summ. J. Ex. IV, Sandra Hayes Dep. ("S. Hayes Dep.") at 44-49.) Sandra Hayes had no evidence that Smith had come into Rashid's Hair Gallery on any dates other than July 3, July 5, and September 20. (Id. at 55.) Mrs. Hayes had received reports that Smith was outside Rashid's Hair Gallery watching the business, but it is not clear whether that occurred on dates other than

those above. (Id. at 50-55.) Mrs. Hayes testified that she had seen Agent Smith in his car in the neighborhood on another date or dates. (Id. at 52.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if the evidence is such that a reasonable jury could find for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is "material" only if it might affect the outcome of the case. Id. Rule 56(c) directs summary judgment "after adequate time for discovery . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Rule 56 further specifies that "[s]upporting and opposing affidavits shall be made on personal knowledge, [and] shall set forth such facts as would be admissible in evidence, . . ." "[A]n adverse party may not rest upon the mere allegations or denials of the adverse party's

response, but . . . by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

III. DISCUSSION

To assert a claim under 42 U.S.C.A. § 1983, the plaintiff must show that the conduct complained of was committed by a person acting under color of state law and that it deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or federal laws. Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908 (1981), overruled on other grounds, 474 U.S. 327, 106 S. Ct. 662 (1986). In this case, Defendants concede the first requirement, but deny that they violated any of Hayes' federally protected rights.

A. Fourth Amendment Claims

Hayes claims that Agent Smith conducted warrantless searches of his business without probable cause or reasonable suspicion, in violation of the Fourth Amendment. He alleges that some of Smith's actions were undertaken at the direction and with the approval of Defendant Ronald Zappan.

In Griffin v. Wisconsin, 483 U.S. 868, 872, 107 S. Ct. 3164, 3168 (1987), the Supreme Court upheld a conviction based on evidence seized during a warrantless search of a probationer's residence. The search was undertaken by probation officers pursuant to a state statute and regulations authorizing them to

conduct warrantless searches. The Court stated that "[a] State's operation of a probation system, like its operation of a school, government officer or prison, or its supervision of a regulated industry, likewise presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." Id. at 873-74, 107 S. Ct. at 3168. Griffin went on to note that "it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." Id. at 874, 107 S. Ct. at 3169 (quoting Morrissey v. Brewer, 408 U.S. 471, 480, 92 S. Ct. 2593, 2600 (1972) (alteration in Griffin)).

In United States v. Hill, 967 F.2d 902 (3d Cir. 1992), the United States Court of Appeals for the Third Circuit ("Third Circuit") applied the reasoning of Griffin to the search of a parolee's residence and store, and upheld his conviction although Pennsylvania, unlike Wisconsin in Griffin, had no specific statutory or regulatory provision authorizing warrantless searches. Id. at 908. Quoting Griffin, the Hill court stated that the warrant requirement did not apply in the usual way to parolees because "parolees enjoy 'only conditional liberty properly dependent on observance of special . . . restrictions.'" Hill 967 F.2d at 909 (quoting Griffin, 483 U.S. at 874, 107 S. Ct. at 3169.) Hill noted that parole may be an even more severe restriction on liberty than probation because the parolee had

already been adjudged in need of incarceration. Hill, 967 F.2d at 909; see also Jarvis el v. Pandolfo, 701 F. Supp. 98, 101 (E.D. Pa. 1988) (warrantless search of parolee's home held constitutional). It concluded that parole agents needed to have a reasonable basis for conducting a search but that they required neither a search warrant nor probable cause. Id. at 910.

The Hill court relied on a Ninth Circuit case, Latta v. Fitzharris, 521 F.2d 246 (9th Cir.), cert. denied, 423 U.S. 897, 96 S. Ct. 200 (1975), in which, it stated, the Latta court

acknowledged that parole searches must be reasonable, but found that the parole agent was not required to have probable cause. The court pointed out that the main goal of parole is to provide for supervised rehabilitation outside of prison. However, parole should also deter recidivism. For these reasons, parole authorities have a "special and unique interest in invading the privacy of parolees under their supervision." This interest in turn requires the officer to have a "thorough understanding of the parolee and his environment, including his personal habits, his relationships with other persons, and what he is doing, both at home and outside it." Such an understanding is acquired only by "conducting some type of search." And while a parolee's reasonable expectation of privacy is greater than a prisoner's, it is still less than the average citizen's. In these circumstances, it is reasonable to allow a parole officer to search whenever he reasonably believes that it is necessary to perform his duties. The decision to search must be based on "specific facts," but the officer need not possess probable cause.

The court held that a search warrant was not required because the relationship between the parole officer and his parolee is "special" and "sui generis so far as the warrant requirement is concerned."

Hill, 967 F.2d at 910 (quoting Latta, 521 F.2d at 249-251) (citations omitted). The Hill court went on to say that in deciding whether to revoke parole, the parole board would need to know the number and seriousness of all violations, as well as other current information about the parolee's progress. 967 F.2d at 910. It concluded that once the parole agents had reason to believe that Hill might have committed further parole violations, "they were duty-bound to investigate whether these allegations were true." Id. at 911. For these reasons, the Hill court held that a warrantless search of Hill's business was legal. Id.

In the instant case, Plaintiff argues that Agent Smith violated Hayes' Fourth Amendment rights on July 3 and July 5 by unlawfully searching the private back room of Rashid's Hair Gallery without good reason. He cites case law stating that a person may have a reasonable expectation of privacy in commercial premises. United States v. Hall, 47 F.3d 1091, 1094 (11th cir.), cert. denied, 116 S. Ct. 71 (1995). The reasonableness of the expectation depends on such factors as whether the person has a possessory or property interest in the premises, United States v. Conley, 813 F. Supp. 372, 377 (W.D. Pa.), rev'd on other grounds, 4 F.3d 1200 (3d Cir. 1993), and whether he or she has taken "the additional step of barring the public from the area because a business operator has a reasonable expectation of privacy only in those areas from which the public has been excluded." United States v. Dunn, 480 U.S. 294, 316, 107 S. Ct. 1134, 1147 (1987). In this case, Hayes had a possessory interest in the building in

which his business was located (Hayes Dep. at 50), and his employees stated that, when Agent Smith entered the business, the door to the back room was closed and a "No Trespassing/Personnel Only" sign was posted. Had Hayes been an ordinary citizen, his reasonable expectation of privacy might have been violated. The case law Hayes cites does not however, refer to parolees, whose expectation of privacy is significantly reduced.

Plaintiff appears to be arguing that, when Rashid's employees said that Hayes was not present, Smith was not justified in going into the back room and looking for him, and that Agent Smith improperly searched the back room "like he owned the place," "looking in boxes as though he were trying to find something." (M. Smith Aff. at ¶ 4; Johnson Aff. at ¶ 8.) Defendants contend that Hayes' violation of his parole entitled them to search his home or business or both to find him. Before the searches on July 3 and July 5, 1995, Hayes had failed to report to his parole agent for several urinalysis tests. That was a violation of his parole, and he had previously been declared delinquent on April 25, 1995. (Defs.' Mot. Summ. J. Ex. V-9.) Agents searched Hayes' business, including the back room, on July 3, looking for him. He was not there, and when they found him at his residence, Hayes admitted to having used marijuana and refused to give a urine sample. On July 5, when Hayes failed to report to his parole agent at the appointed hour, Defendants again searched his business, looking for him. Defendants' position is that parole agents were justified in

searching the entire premises, including the back room, in an effort to find Hayes on both occasions. In the course of searching for Hayes, Agent Smith saw something that raised in him a reasonable suspicion that the back room of the business was being used for an illegal purpose. That justified his searching further in an attempt to confirm or disprove that suspicion.

I conclude that Agent Smith's searches of the back room of Rashid's Hair Gallery on July 3 and July 5, 1995, had a reasonable basis. There are factual disputes, but I find none of them material. Whether or not the door to the back room was open, Agent Smith was justified in entering the room to look for Hayes. He saw there something there that raised his reasonable suspicion of illegal activity, and he therefore was justified in searching further in an effort to determine whether such activity was, in fact, taking place. Indeed, under Hill, Agent Smith was "duty-bound" to investigate further. Agent Smith was at Rashid's Hair Gallery looking for Hayes, who was in technical violation of his parole, for failure to report to his parole officer. Smith was not obliged to take the word of Hayes' employees that Hayes was not there. Some of the employees by their own admission were not entirely cooperative. One refused to speak with Agent Smith and another refused to give her name. Accepting the employees' statements that their failure to cooperate was a response to Smith's rudeness, their responses still might reasonably have aroused Smith's suspicion that Hayes was on the premises and justified Smith's entry into the back room, even if the door was

closed. Smith claims that, once he was in the back room, he saw what seemed to him to be evidence of a possible further parole violation, the use of the back room as a "speakeasy." There is no evidence contradicting what Smith claims to have observed in the back room, and Hayes did not dispute that the "desk" being built in the room might have looked like a bar. I conclude that Agent Smith could reasonably have thought there was a bar in the back room and could reasonably have suspected the room might have been used as a speakeasy. It was therefore reasonable for Smith to try to determine on both occasions whether there was another parole violation, incident to his search for Hayes.

Defendants further justify Agent Smith's search of the business by pointing to the parole form Hayes signed consenting to parole agents' searches of his person, property, and residence without warrants. It states, "I hereby consent to the search of my person, property and residence without a warrant by agents of the Pennsylvania Board of Probation and Parole." (Defs.' Mot. Summ. J. at Ex. V-8.) Plaintiff argues that his signing of the parole form does not furnish the PBPP with unlimited license to conduct warrantless searches of any area in which Plaintiff maintains an expectation of privacy.

Plaintiff cites a number of cases in which Pennsylvania courts have held that a warrantless search of a parolee's or probationer's residence violated the Fourth Amendment. See, e.g., Commonwealth v. Pickron, 634 A.2d 1093 (Pa. 1993) (interpreting Griffin and suppressing evidence seized in

warrantless search of parolee's residence based on reasonable suspicion but without his consent or a regulatory framework governing the search); Commonwealth v. Richardson, 664 A.2d 1042 (Pa. Super. Ct. 1995) (holding consent clause in parole form insufficient basis for search of parolee's person, property or residence under Fourth Amendment in the absence of state regulatory scheme). Plaintiff notes that the Pickron court rested its analysis solely on the Fourth Amendment to the United States Constitution and not on the Pennsylvania Constitution. 634 A.2d at 1096. However, it is the Third Circuit's interpretation of the Fourth Amendment that binds this Court, not that of the Pennsylvania state courts, and in Hill, the Third Circuit allowed parole officers considerably more leeway to search without a warrant than did the Pickron court. In addition, my conclusion that the search was justified did not depend on Hayes' consent.

On September 20, 1995, Smith was present at Rashid's Hair Gallery not to look for or to investigate Hayes, who was by then incarcerated, but rather to look for another parole violator, who was said to work there. At that time, Mrs. Hayes voluntarily showed Smith the back room. Some of the employees referred globally to Smith's harassment of the business, but gave no dates other than July 3, July 6, and July 20, and on those dates, Smith had valid reasons for being there. There were repeated statements that Smith's manner was offensive whenever he was in Rashid's Hair Gallery; however, such behavior does not in

itself violate the Fourth Amendment. Nor does Agent Smith's reported occasional surveillance of Rashid's Hair Gallery.

B. Fourteenth Amendment Claims

In their Motion for Summary Judgment, Defendants address constitutional deprivation claimed by Hayes under the Fourteenth amendment and argue that they did not deprive Hayes of any such rights. Hayes does not reply to those arguments; I therefore conclude he does not intend to pursue the claim.

C. Qualified Immunity

The Third Circuit has recently restated the law with respect to qualified immunity. The general principle is that "'government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Grant v. City of Pittsburgh, 98 F.3d 116, 121 (3d Cir. 1996) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982)). The subjective state of mind of the official, or his personal or political motives, are outside the scope of the qualified immunity analysis unless state of mind is an essential element of the underlying civil rights claim. Grant, 98 F.3d at 123-24. Where, as in this case, a civil rights action rests on allegedly unreasonable searches, the motive of

the official is irrelevant; the only question is whether his actions meet the objective criteria for qualified immunity.

Defendants' position is that they are entitled to immunity from Hayes' damages claims because there is no evidence that they violated any clearly established federal rights. I agree. I have already determined that Defendants did not violate Hayes' Fourth Amendment rights, and Plaintiff has not responded to Defendants' contention that they have not violated his Fourteenth Amendment rights.

Hayes, who is African American, claims that Smith, who is Caucasian, had a racial motive for disrupting his business. Hayes alleges that Agent Smith made three "racist" statements. First, when one of the barbers at Rashid's Hair Gallery asked him if he wanted a haircut, Smith replied, "Black Barbers cannot cut [my] kind of hair." (Johnson Aff. at ¶ 4.) Second, Smith asked Hayes how he, an African-American parolee, had acquired the money to open a barbershop. (Hayes Dep. at 250-54.) Third, when Sandra Hayes called Smith and asked about getting Hayes into a particular drug program, Smith told her that it was not for Blacks, that it was a Spanish program. (S. Hayes Dep. at 117-18.) While Hayes complains of Smith's racial animus, he admits he has no evidence that either Smith's or Zappan's actions were motivated by racial animus. (Hayes Dep. at 288-90.) And insofar as the searches did not violate Hayes' Fourth Amendment rights, Defendants' motivation is immaterial.

D. Other Motions

Defendants have filed two other motions, one to compel discovery and one for involuntary dismissal or sanctions pursuant to Fed. R. Civ. P. 11. The discovery motion and the motion for involuntary dismissal are mooted by this Court's granting Defendants' Motion for Summary Judgment. As to the motion for sanctions pursuant to Rule 11, monetary sanctions are not appropriate for a litigant proceeding in forma pauperis, and Defendants have suggested no other sanctions except dismissal, which will be granted on other grounds.

IV. CONCLUSIONS

For reasons stated in the foregoing, Defendants' Motion for Summary Judgment will be granted, their Motion to Compel Discovery will be declared moot; and their Motion for Sanctions and/or for Involuntary Dismissal will be denied as to the sanctions and declared moot as to the involuntary dismissal.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LESTER HAYES, et al.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
NICHOLAS MULLER, et al.,	:	No. 96-1628
Defendants	:	

O R D E R

AND NOW, this day of June, 1997, upon
consideration of Defendants' Motion for Summary Judgment (Doc.
No. 42), Defendants' Motion to Compel Discovery (Doc. No. 41),
Defendants' Motion for Sanctions and/or for Involuntary Dismissal
(Doc. No. 40), and Plaintiff's Response (Doc. No. 44), **IT IS**
HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment (Doc. No. 42) is **GRANTED**;
2. Defendants' Motion to Compel Discovery (Doc. No. 41) is **DENIED AS MOOT**;
3. Defendants' Motion for Sanctions and/or for Involuntary Dismissal (Doc. No. 40) is **DENIED** with respect to sanctions and **DENIED AS MOOT** with respect to Involuntary Dismissal; and
4. This case shall be marked **CLOSED**.

BY THE COURT

John R. Padova, J.